

OPINION No. 29/2000 (PERU)

Communication addressed to the Government on 13 October 1999

Concerning Edilberto Aguilar Mercedes

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work the Working Group forwarded the above-mentioned communication to the Government.
2. The Working Group regrets that the Government did not reply within the 90-day time limit.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
 - (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.
5. According to the communication, Edilberto Aguilar Mercedes was arrested without a warrant on 1 March 1993 in Machacuay and accused of belonging to the Shining Path terrorist group. When he made his statement to the police, at which time he had no defence counsel, he denied belonging to the group and indicated that, in fact, he repudiated it because it was responsible for the death of three of his uncles and it kept threatening his father.

6. On 10 March 1993, he was brought to trial for the offence of terrorism and, on 21 November 1994, a special “anonymous” division of the Lambayeque High Court of Justice sentenced him to 20 years’ imprisonment without properly evaluating what went on during the trial. The sentence was upheld by the Supreme Court on 25 August 1995.

7. According to the source, not only was there no warrant for his arrest, but he was also not allowed to apply to a court for an effective remedy concerning the lawfulness of his detention because the anti-terrorist legislation stated that habeas corpus was not applicable. In addition, he was tried by courts composed of “faceless” judges, contrary to the principle of independent and impartial courts.

8. According to the information, the exculpatory evidence was not evaluated by the judges. The secret court which tried him attached full importance to statements by terrorists requesting the benefit of the Repentance Act, even though the statements were insufficient and contradictory and there was no evidence to corroborate them, contrary to the provisions on presumption of innocence contained in article 14, paragraph 2, of the Covenant.

9. On the basis of the allegations, which have not been refuted by the Government, the Working Group considers that Edilberto Aguilar Mercedes was tried unfairly, without being allowed access to a proper defence and without having his statement taken into account, and that, notwithstanding evidence produced during the trial, it was conducted by “faceless” judges, without any guarantee of independence or impartiality.

10. In its report on its mission to Peru (E/CN.4/1999/63/Add.2), the Working Group gave a detailed analysis of the operation of the faceless civilian and the military courts which handed down their decisions following trials conducted in secret with minimum guarantees of the rights of defence until October 1997. In the Working Group’s opinion, such trials are an infringement of due process of such gravity as to confer on the deprivation of liberty an arbitrary character, in accordance with category III of its methods of work. Mr. Aguilar Mercedes’ trial took place prior to the abrogation of the anti-terrorist legislation which entered into force in October 1997.

11. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Edilberto Aguilar Mercedes is arbitrary, since it is contrary to articles 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

12. Having rendered this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation, in conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 27 November 2000